

REMARKS/ARGUMENTS

Claims 11 – 47 are presented for consideration upon entry of this Amendment. Claims 46 and 47 are new. For at least the reasons set forth below, Applicants respectfully submit that claims 11 – 47 are patentable over the cited art.

Claims 11 – 13, 16, and 44 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S Patent No. 4,361,150 to Voss ("Voss"). For at least the reasons set forth below, Applicants submit that claims 11 – 13, 16, and 44 are not disclosed or suggested by Voss.

Independent claim 11 provides "said barrel has a flared region adjacent to said finger grip that extends to an end of said barrel opposite said insertion tip, said flared region has a flared maximum outer diameter at said end, said flared maximum outer diameter is about 10 percent to about 30 percent larger than said outer diameter of said finger grip."

As shown in Figure 1, clearly, Voss fails to disclose or suggest that the barrel has a flared region adjacent to the finger grip that extends to an end of the barrel opposite the insertion tip, let alone that the flared region has a flared maximum outer diameter at the end where the flared maximum outer diameter is about 10 percent to about 30 percent larger than the outer diameter of the finger grip, as recited by claim 11.

Accordingly, Applicants respectfully submit that Voss fails to disclose or suggest the features of independent claim 11. As such, claim 11, as well as claims 12, 13, 16, and 44 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal are respectfully requested.

Claims 14 – 15, 17 – 24, 26 – 33, 35 – 40, 42 – 43, and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Voss. For at least the reasons set forth below, Applicants submit that claims 14 – 15, 17 – 24, 26 – 33, 35 – 40, 42 – 43, and 45 are not disclosed or suggested by Voss.

As discussed above, independent claim 11 provides that the barrel has a flared region adjacent to the finger grip that extends to an end of the barrel opposite the insertion tip, that the flared region has a flared maximum outer diameter at the end, and that the flared maximum outer diameter is about 10 percent to about 30 percent larger than the outer diameter of the finger grip, as recited by claim 11.

As discussed above, clearly, Voss fails to disclose or suggest that the barrel has a flared region adjacent to the finger grip that extends to an end of the barrel opposite the insertion tip, let alone that the flared region has a flared maximum outer diameter at the end where the flared maximum outer diameter is about 10 percent to about 30 percent larger than the outer diameter of the finger grip. Voss provides that “[t]he gripper ring 18 which is formed at the trailing end of applicator tube 12 is in the form of an integral flange which projects outwardly in a radial direction from the trailing extremity of the tube 12 and takes the form of a thin, extremely wide plate... (emphasis added)” (col. 5, lines 4-8). Thus, Voss teaches away from a flared region adjacent to the finger grip that extends to an end of the barrel opposite the insertion tip, let alone that the flared region has a flared maximum outer diameter at the end with the flared maximum outer diameter being about 10 percent to about 30 percent larger than the outer diameter of the finger grip, as recited by claim 11, as recited by claim 11. In addition, paragraph [0041] of the application provides “[f]lared region 56 provides a firm grip surface during expulsion of pledget 12 from barrel 14, as well as during removal of the barrel from the body. Thus, regions 54, 56 can mitigate slipping of the user’s fingers from gripping region 58.” Paragraph [0055] of the application also provides that “the tapers of insertion tip 20 and main section 22, as well as flared region 56 of finger grip 24 combine to increase the ease, comfort, and grip during the removal of assembly 10.”

Accordingly, Applicants respectfully submit that Voss fails to disclose or suggest the features of independent claim 11. As such, claim 11, as well as claims 14 – 15 and 17 – 20 that depend therefrom, are in condition for allowance.

Independent claim 21 provides, in part, "said tapered main section having a main section taper ratio of about 1.07 to about 1.15."

The Office Action concedes that Voss remains silent as to the degree of the taper of the main section. The Office Action asserts that Voss discloses the main section being tapered, as described in column 4, lines 15-19, but remains silent as to the degree of taper and the taper of the barrel of Voss is shown in Figure 1 as being very gradual. The Office Action further asserts that it would therefore be obvious to one of ordinary skill in the art at the time of the invention to provide the applicator barrel of Voss with a taper ratio of about 1.08 to about 1.13 to provide a gradual taper to the barrel.

The proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. See MPEP §2125. Also, "[a]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value." See In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). In addition, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See Hockerson-Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000).

Any reliance on the drawings of Voss to satisfy the main section taper ratio of about 1.07 to about 1.15, as recited in claim 21, is flawed. The written description in Voss fails to disclose quantitative values regarding a taper ratio, let alone a gradual taper in the written description. Thus, Voss fails to disclose or suggest that the tapered main section having a main section taper ratio of about 1.07 to about 1.15, as recited by independent claim 21.

Accordingly, Applicants respectfully submit that Voss fails to disclose or suggest the features of independent claim 21. As such, claim 21, as well as claims 22 – 24, 26

– 30 and 45 that depend therefrom, are in condition for allowance.

Independent claim 31 provides, in part, “said insertion tip having a plurality of petals and a taper ratio of more than about 0.66.”

As discussed above, the Office Action concedes that Voss remains silent as to the degree of the taper of the main section. The Office Action asserts Voss discloses the insertion tip is tapered at an angle of about 90° and that it would therefore be obvious to one of ordinary skill in the art at the time of the invention to provide the insertion tip area of Voss with a taper ratio between 0.7 and 0.9. Applicants respectfully disagree. Voss provides that “the included angle formed between the inclined side edges 24 of each segment is equal to or greater than 90°.” (col. 4, lines 42-44). Thus, Voss provides for an angle formed between the end segments 19, which does not disclose or suggest a taper ratio, let alone a taper ratio of more than about 0.66, as recited by claim 31.

In addition, as discussed above, the written description in Voss fails to disclose quantitative values regarding a taper ratio. Thus, Voss fails to disclose or suggest that the insertion tip has a plurality of petals and a taper ratio of more than about 0.66, as recited by independent claim 31.

Accordingly, Applicants respectfully submit that Voss fails to disclose or suggest the features of independent claim 31. As such, claim 31, as well as claims 32, 33, 35, and 36 that depend therefrom, are in condition for allowance.

Independent claim 37 provides, in part, “said plurality of petals having a petal length-to-width ratio over about 2 to about 3.”

As discussed above, the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale and absent any written description in the specification of quantitative values, arguments based on measurement of a drawing

are of little value. The written description in Voss fails to disclose quantitative values regarding a petal length-to-width ratio. Thus, Voss fails to disclose or suggest a petal length-to-width ratio over about 2 to about 3, as recited by independent claim 37.

Accordingly, Applicants respectfully submit that Voss fails to disclose or suggest the features of independent claim 37. As such, claim 37, as well as claims 38 – 40, 42, and 43 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 25, 34, and 41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Voss in view of U.S. Patent No. 6,264,626 to Linares et al. ("Linares"). For at least the reasons set forth below, Applicants submit that claims 25, 34, and 41 are not disclosed or suggested by Voss.

As discussed above, Voss fails to disclose or suggest the features of independent claims 21, 31, and 37. Claim 25 depends from claim 21, Claim 34 depends from claim 31, and claim 41 depends from claim 37. Thus, claims 25, 34, and 41 are patentable over Voss for at least the reasons discussed above for independent claims 21, 31, and 37, respectively.

In addition, Linares fails to cure the deficiencies of Voss.

Accordingly, Applicants respectfully submit that the cited combination of Voss and Linares fails to disclose or suggest the features of claims 25, 34, and 41. As such, claims 25, 34, and 41 are in condition for allowance. Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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